

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUSTIN GOLDMAN,

Plaintiff,

-v-

BREITBART NEWS NETWORK, LLC,
HEAVY, INC., TIME, INC., YAHOO, INC.,
VOX MEDIA, INC., GANNETT COMPANY,
INC., HERALD MEDIA, INC., BOSTON
GLOBE MEDIA PARTNERS, INC., and NEW
ENGLAND SPORTS NETWORK, INC.,

Defendants.
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17-cv-3144 (KBF)

MEMORANDUM
DECISION & ORDER

KATHERINE B. FORREST, District Judge:

In this high-profile, high-impact copyright case, defendants have moved for certification of the Court’s partial summary judgment decision for interlocutory appeal under 28 U.S.C. § 1292(b) and to stay all other proceeding pending appeal.

28 U.S.C. § 1292(b) allows the district court to certify an interlocutory appeal from an Opinion or Order where the Order “involves a controlling question of law as to which there is substantial ground for difference of opinion and [where] an immediate appeal from the order may materially advance the ultimate termination of the litigation.” The Second Circuit has recognized that § 1292(b) was passed in part “to assure the prompt resolution of knotty legal problems.” Weber v. United States, 484 F.3d 154, 159 (2d Cir. 2007.)


The Court finds that certification under §1292(b) is appropriate here for several reasons. The Court credits the parties' representations that its February 15, 2018 Opinion, finding defendants liable for violating the display right under § 106(5) of the Copyright Act, has created tremendous uncertainty for online publishers. In this case, the embedded image was hosted on Twitter; given the frequency with which embedded images are "retweeted," the resolution of this legal question has an impact beyond this case.

While there are remaining issues to be determined, the key issue in this case—whether there is copyright liability under the display right where one publisher "embeds" an image hosted on a third-party server—has already been decided. Furthermore, a reversal on appeal would result in the dismissal of several defendants and narrow the issues for those defendants who would remain. It would thus materially advance the ultimate termination of this litigation.

Accordingly, in order to bring resolution to an important and controlling question of law and to more efficiently resolve this matter, the Court certifies its February 15, 2018 Opinion for interlocutory appeal. All other proceedings are stayed pending this appeal.

SO ORDERED.

Dated: New York, New York
March 19, 2018

A handwritten signature in black ink, appearing to read "K. B. Forrest", is written above a horizontal line.

KATHERINE B. FORREST
United States District Judge